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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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OCT 20 1997

In the Matter of)
)
)
Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)
)
)
Implementation of Sections 3 (n))
and 332 of the Communications Act)
)
)
Regulatory Treatment of Mobile)
Services)
)
)
Implementation of Section 309 (j))
of the Communications Act --)
Competitive Bidding)

PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

GN Docket No. 93-252

PP Docket No. 93-253

To: The Commission

REPLY TO OPPOSITION

In accordance with §1.429(g) of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC")¹ Chadmoore Wireless Group, Inc. ("Chadmoore") respectfully submits this Reply to the Opposition of Nextel Communications, Inc. in the above-captioned proceeding.² Chadmoore is concerned that should the Commission adopt the policy course recommended by Nextel rather than the various petitioners in this matter, the rights of incumbent 800 MHz licensees will be negatively impacted and competition in the provision of mobile radio

¹ 47 C.F.R. §1.429(g) (1996).

² Opposition of Nextel Communications, Inc. to Petitions for Reconsideration of the *Second Report and Order* (October 9, 1997).

services to the public will be hindered. Thus, Chadmoore is pleased to have this opportunity to respond to Nextel's opposition.

I. INTRODUCTION AND BACKGROUND STATEMENT

1. Chadmoore is a licensee and a manager of numerous facilities authorized throughout the nation in the 800 MHz Special Mobile Radio ("SMR") service. Chadmoore has now activated services through its 800 MHz authorized facilities in 80 cities throughout the southeastern and midwestern United States. Chadmoore holds additional authorizations and is in the process of constructing and offering services on a wide area basis in which it is expected that Chadmoore's services ultimately will be available in 150 markets. Chadmoore's system encompasses facilities which operate on frequency assignments from both the "lower 80" and "upper 200" SMR channels as well as General Category channels.

2. While numerous new entrants in the mobile radio service arena apparently are concentrating on large-scale business customers, Chadmoore has taken a different approach. Chadmoore's principle thrust of its marketing activity has been to provide basic voice and data telecommunications services to small businesses who do not always have the resources to afford the more expensive and technologically complex services offered by larger CMRS entities. Thus, many smaller business entities in the markets served by Chadmoore have taken advantage of Chadmoore's services and have realized the benefits of mobile telecommunications capabilities to enhance their businesses and enhance the efficiency of their business operations. Without Chadmoore's offerings, many smaller business entities who now have reliable mobile telecommunications access, would be placed at a competitive disadvantage and would be unable to enjoy the benefits that wireless telephony and related services can bring to small businesses. Chadmoore also notes that many of

its customers have heightened needs for reliable and affordable capabilities. For example, in some markets, Chadmoore provides telecommunications services to small private ambulance services which count on Chadmoore's system to ensure prompt dispatch in emergencies. Thus, Chadmoore believes that it provides a valuable service to its niche market and that the Commission must take steps to enable Chadmoore and other similar service providers to continue to make their brand of services available to underserved segments of the business community.

3. The *Second Report and Order* ("*Second R & O*") established, among other things, the rights and obligations of incumbent SMR licensees and new Economic Area ("EA") licensees who will hold wide area 800 MHz licenses after the completion of the EA licensing auctions. Further, the *Second R & O* established rules for retuning incumbent SMR operators out of the upper 200 SMR channels and established a policy applicable to the assumption of retuning costs and reimbursement of those costs by EA licensees. Several petitioners have sought reconsideration of the policies adopted in the *Second R & O*.³ These petitions represent commentary predominantly by incumbent 800 MHz licensees or their representative associations. Chadmoore believes that these petitions are quite beneficial in helping the Commission to finalize its rules in a manner which will, at least to some extent, minimize transition difficulties faced by incumbent 800 MHz licensees. Thus, as is further discussed herein, Chadmoore is in general agreement with much of the commentary filed by the various petitioners. Chadmoore believes that Nextel's Opposition proposes policies which will

³ The petitioners include: the American Mobile Telecommunications Association ("AMTA"); the Personal Communications Industry Association ("PCIA"); Small Business in Telecommunications ("SBT"); Entergy Services, Inc. and Delmarva Power ("Entergy/Delmarva"); the Industrial Telecommunication Association, Inc. ("ITA"); the Automobile Club of Southern California ("Auto Club"); and Genesee Business Radio Systems, Inc. ("Genesee").

be harmful to the interests of incumbent licensees, particularly those who serve the basic telecommunications needs of small businesses who do not need more feature-rich high-end services such as those contemplated by Nextel. Thus, should the Commission act in accord with Nextel's policy proposals, effective competition in the commercial mobile industry will be obstructed, and niche service providers such as Chadmoore could face serious difficulties. Such a scenario certainly is not in the public interest and Chadmoore believes that the Commission should act in accordance with the positions of the petitioners and adopt their policy recommendations.

II. REPLY COMMENTS

4. Nextel proposes that the Commission take steps to limit the capabilities of incumbent systems to be modified following termination of the EA auction process, and to minimize the duty of EA licensees to reimburse incumbents for the cost of migration. Additionally, Nextel urges the Commission to minimize the responsibilities of EA licensees to provide adequate notification to incumbent licensees during the migration process, and Nextel suggests that a shorter retuning negotiation time frame should be established. Chadmoore opposes adoption of these proposals as outlined below.

A. The Commission Must Ensure That The Incumbent 800 MHz Licensees Retain The Flexibility to Ensure Efficient Operation Of Their Systems

5. The Commission's *Second R & O* provides incumbent SMR businesses conducting operations on the "lower 80" SMR and General Category channels to have some operational flexibility by permitting system modifications within the incumbent's 18 dBu signal strength contour where the incumbent licensee "obtains the consent of all affected parties".⁴ ITA proposes that the

⁴ ITA Petition at page 3.

Commission should adopt a policy wherein a frequency coordinator's authorization could be substituted in lieu of the consent of all affected licensees where such consent is not obtainable.⁵ Nextel argues that obtaining the consent of all affected co-channel licensees is necessary to protect against harmful interference.

6. Chadmoore is in agreement with ITA's proposal and believes Nextel's policy suggestion is misplaced. Where a certified frequency coordinator can perform an engineering study, and where the incumbent licensee proposes a modification of its system that will not expand its 18 dBu contour, there is no valid technical reason to require that a potentially affected co-channel licensees' consent must be obtained for the modification. For some time the Commission has successfully used contour protection standards to ensure flexibility for licensees as well as efficient use of the limited spectrum resource. Generally, the system has worked well. Thus, Nextel's objection appears unfounded. Moreover, in an atmosphere of true competition among licensees in the provision of commercial mobile services, a licensee planning to bid at a future auction of "lower 80" SMR spectrum could potentially be placed in a position to "lock in" competitor incumbent licensees by refusing to grant concurrences for system modifications. Thus, by adoption of such a policy, the Commission would have improperly delegated its authority to ensure efficient spectrum usage to EA license applicants. Certainly, Chadmoore believes that in a competitive environment potential EA applicants would face a temptation to act in an obstructionist manner and refuse to grant concurrences in order that potential competitors could not engage in advantageous system modifications. Thus, Chadmoore supports ITA's proposal and believes that it should be promptly adopted by the Commission. Additionally, Chadmoore supports ITA's proposal to minimize the

⁵ Petition of ITA at page 4.

threat of challenges to incumbent system modifications from EA licensees.⁶ While Nextel believes that ITA's proposal would "expand the rights of the incumbent by mandating greater co-channel protection from an EA licensee than an incumbent is entitled to"⁷ incumbent licensees must have an adequate means to modify systems and maintain those modifications where interference to other licensees may be minimized. Moreover, prior to auctions, potential 800 MHz spectrum bidders may easily take advantage of review of FCC records and databases to fully apprise themselves of the coverage of preexisting systems and prepare business plans and bidding strategy in accordance with their findings. Thus, adoption of ITA's proposal poses no real threat of harm to EA licensees.

**B. The Commission Must Adopt Policies That Will Ensure A Reasonably
Smooth Transition To Wide Area Licensing**

7. The *Second R & O* also establishes the rules which will govern the retuning of incumbent licensees out of the "upper 200" SMR channels. The Commission has adopted a five year cap on the responsibility of EA licensees to reimburse recurring expenses which are triggered by migration of incumbent systems. Genesee Radio Systems suggests that a longer term should be adopted.⁸

8. Nextel opposes Genesee's position and supports a three year limitation on repayment of recurring expenses. In defense of its position, Nextel notes that any payments by EAs of recurring expenses beyond a three year period would be "purely speculative" and beyond the realm

⁶ Petition of ITA at page 4.

⁷ Nextel Opposition pages 4-5.

⁸ Genesee Petition at page 4.

of the Commission's cost reimbursement parameters.⁹ Chadmoore opposes Nextel's position and supports Genesee's contention that EA licensees should be required to reimburse migrating incumbents for any new recurring expenses for at least a ten year period. It is unfair to ask incumbents who agree to migrate for the benefit of an EA licensee to assume new costs such as added site fees which they incur to accommodate the EA licensee. As was explained by Genesee in its Petition for Reconsideration,¹⁰ most communication systems are put into service by operators with the expectation of a ten year life cycle. Thus, it is only equitable that when an EA licensee demands and benefits from the migration of an incumbent licensee, the EA licensee should assume new recurring expenses in excess of existing recurring expenses for a ten year period.

9. Chadmoore also is concerned that the Commission adopt notice requirements in conjunction with the migration of incumbents which will be adequate to smooth the transition process for all parties. In that connection, PCIA requested that the Commission adopt more specific rules concerning the retuning notice provided by the EA licensee intending to relocate an incumbent. Nextel opposes PCIA's request.¹¹ While PCIA's notice proposal goes beyond that initially adopted by the Commission, Chadmoore believes the proposal is quite reasonable. Rather than sending a "general notice" to an incumbent licensee that its system may need to be retuned, the EA licensee should, as PCIA suggests, provide all specific details that are available to the incumbent licensee in terms of sites, frequencies, and other technical parameters of its relocation demands as early as possible. This will expedite the retuning process by providing adequate information to incumbents

⁹ Opposition of Nextel at page 8.

¹⁰ Petition of Genesee at page 4.

¹¹ Opposition of Nextel at page 8.

at an early date. Additionally, Chadmoore does not agree with Nextel's position that the two year time period for mandatory incumbent system relocations is too lengthy and should be shortened.¹² While the earlier 2 GHz microwave migration to accommodate PCS may provide a good general model for spectrum migrations in other services, the retuning of fixed links to lightly encumbered alternate spectrum was considerably easier than will be the case with the reengineering of 800 MHz mobile systems into crowded replacement spectrum. Thus, Chadmoore believes that this migration will be considerably more time consuming than the 2 GHz microwave transition proved to be, and believes that the current 2 year period is the absolute minimum time that would be necessary to ensure a reasonable transaction and to minimize disruption of the incumbent's service to the public. Thus, Chadmoore opposes Nextel's suggestion that the two years retuning negotiation time period should be reduced.

III. CONCLUSION

10. Chadmoore is concerned that the Commission establish policies and procedures which will help minimize disruption of service during the 800 MHz spectrum migration process. The migration will not be easily accomplished and many technical hurdles will have to be overcome for this transition to take place. Chadmoore reminds the Commission that its actions in this instance will determine the fate of numerous incumbent licensees and that many of these licensees are either smaller businesses or are business entities like Chadmoore who provide services to a needy but sometimes underserved segment of the public. Chadmoore also reminds the Commission of the directives of Congress in the Telecommunications Act of 1996 that the Commission should engage in spectrum management in a manner which will help foster and ensure robust competition in the

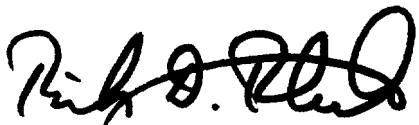
¹² Opposition of Nextel at page 9.

mobile services marketplace. By acting in accordance with the suggestions contained herein, the serious burdens that the transition will impose upon incumbent licensees will not be eliminated, but will at least be somewhat ameliorated. In this manner, the Commission can act to help maintain at least some semblance of competition in the commercial dispatch radio service market.

WHEREFORE, THE PREMISES CONSIDERED, Chadmoore Communications opposes the positions expressed by Nextel to the extent described above and respectfully requests that the Commission act in accordance with Chadmoore's comments to ensure that reasonable treatment of incumbent licensees will be maintained throughout the 800 MHz transition process.

Respectfully submitted,

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October 20, 1997

CERTIFICATE OF SERVICE

I, Tracy Lynn Trynock, hereby certify that on this 20th day of October, 1997, copies of the foregoing "Reply To Opposition" have been served by hand-delivery or by first-class United States Mail, postage prepaid, upon the following:

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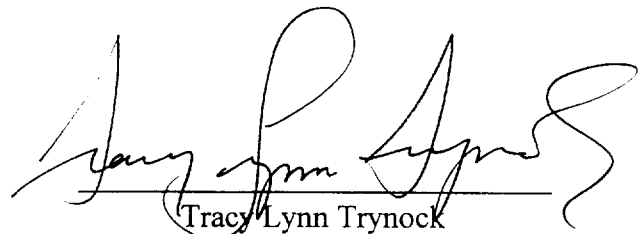
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